shir decision, with proper instructions as to select of aggligence on the part of the driver, as it as on the part of the child. In regard to the fandants, there can be no doubt that the decision itselary as to the negligence of the driver is considered upon that point. In regard to the child, so, I think the same rule must be recognized, here are cases where permitting a very young child be in the streets without an attendant is of self evidence of negligence sufficient to defeat an ition of this kind; but these cases are of children itch younger than this one; and although there ay be negligence in permitting such a child to be one in the streets of a city, unattended, still, at ur age, I am not propared to say that, as matter of w, such negligence is to be presumed. On the entrary, I think it is properly be be left to the jury say whether, under the peculiar chromatances of che case, a child permitted to go through the rects at such an age was or was not possessed of fficient judgment and discretion to avoid ordinary cidents, to which she might be exposed in cross the streets of the city. The defendants power of the city and administration of the city and an administration of the city and an administration of the city and an administration of the city and as to the want of progress of the city and an administration of the city and adm

shell of him is under such circumstances. When the Judge gave them the words of the statute as the rale of damage, he certainly did not err, and when he told them that the damages were to be what the mether may be supposed to incur by the death of the child, he only told them that the damages were to be a sum which, in their opinion, would be the pstuniary loss of the next of kin. Any other construction would entirely destroy the intent of the statute, which was to give to the next of kin a right of action for an injury, which the injured person would have had, had not the injury resulted in let death. And we cannot accept any other consultation as to the policy of this law, than that it was majended to compel persons and corporations engaged in a business which endangered the lives of the effizens, to be more careful than had been the case before its pheage, and by affording a redress for each injuries, which did not exist before, to punish them for their negligence. Such an intent is evidenced by the 2d section of the act of 1849, which inflicts upon the guilty agent or servant of a company, punishment for the same offence for which damages may be recovered. In the construction of acts passed evidently with the intent of requiring from milroad corporations, as well as others, more care in regard to the lives of travellers and persons passing through the streets and highwaye, a is not the duty of courts to adopt views which which led to render such acts angatory and enable violators of them to escape with impunity, as was so often the case before this statute was enacted, but on the case before this statute was enacted, but on the case before this statute defect by adopting the evidence intent with which it was passed, and holding those who negligently destroy the lives of hird persons responsible for the consequences of reach negligence. And where the amount is resting mainly in the diacretion of the care, to which objection was made on the complement of the complaint hereis the plainiff was confined to proof

om such death to the next of kin"—it can be said at such a death has occasioned any damage; and specially where, as in the present case, the mother, he was the only next of kin, had contracted a send marriage. It is not easy to perceive that the ath of her young and dependent offspring could casion pecuniary loss to her beyond, perhaps, the pense of medical stiendance and burial expenses, sorne by her. The construction of the statute in eation is not clear upon this subject. It has been poposed by some to have been only intended for a medical stiendance whose relations to the permitted of these whose relations to the permitted of the statute of the statute in the statute of the statute of the statute in the statute of the statute o

to some pecuniary benefit which would result from a continuance of the life, and which was lost by the death—and not to be applicable to injury like the present, where it caused the death of a child of tonder years and yet in a state of dependence. I am,

after these stains, (in two of which the jury hale's to agree,) disposed to concur with my brethrea in a firming the judgment, lawing the defendants, if observed the state of last resort.

Judge Clerke dimented.

Ogden vs. Sanderson, et al.—INGRAHAM, F. J.—This action is against a surety for rent. No copy of the leave is furnished to the Court, by which we can ascertain the terms of it; and the oaly aformation we have of the conditions is the statement of the counsel that the leave contained a clause providing that the rent should make the send of the counsel that the building was destroyed by fire on the 24th June. Supposing this statement of the condition of the leave to estrue, the rent coased on that day, and the landlord was entitled to recover for the rent from the 1st of May to the 24th of June, payable on the quarter day, lat of Angust. An eviction and a surrender act both set up in the answer, by way of defence to the claim for the Answer of the payable on the quarter day, lat of Angust. An eviction and a surrender act both set up in the answer, by way of defence to the claim for the Answer of the payable on the quarter day, lat of Angust. An eviction and a surrender act by the statement of June, payable on the quarter day, lat of Angust and the following the statement of the surrender is power of the work of the statement of the surrender is power of the surrender by writing or by one-wall and the promises were well and the surrender of the surrender is nothing to contradict his testimony. How the surrender is nothing to contradict his testimony that appears to have been negotiating for a lease at the same time of the surrender and the surrender of the payable, and neither Pholps nor Sanderson as liable on that quarter for anything. Jeanings appears to have falled. An eviction of the term of the premises, and of the without his assent; but where the tenant is not reference with his possession of the key at time their assent; all these negotiations, b

warrant the finding of the Justice on that point. The Justice arred, however, in the amount. The amount of plaintiff's claim, as proved, was \$64. Miss Griggs proved the payment by defendant of \$7, and Levy proved the payments by himself of \$11 IP—making \$18 IS. This leaves a balance of \$45 82. Under any view of the evidence, the judgment should not have exceeded that sum. Judgment reduced to \$45 82, and affirmed for that amount, and \$2 50 costs below, without any costs of appeal.

Bissell vs. Dean.—Ingraham, F. J.—The summons was sufficient; all that is required in regard to the cause of action in the summons is a statement to show that it was for a cause of which the court had jurisdiction. This is answered by an allegation of work and labor for services rendered, or, as in this case, for professional services. Either would be enough to show that the claim arose upon contract. 2. The evidence was sufficient to establish a prima facic case of indebtedness on the bankrupt proceedings. The Clerk from the United States District Court Clerk's Office produced the papers upon which, as he states, the defendant obtained his discharge, and which were conducted by the plaintiff as his attorney, and the value of his services was proven by another witness. So far, therefore, as the evidence was requisite for taking the inquest, it was sufficient to establish a prima facic case against the defendants. The afflavit of the defendant shows, as an excuse for suffering, the default to be taken, that ne had paid for the plaintiff's services in the bankrupt proceedings, and supposed the plaintiff's claim to be for the fee on the motion, which he did not intend to dispute. The plaintiff denies that he has been paid, but admits the receipt of \$20, claiming a right to the balance for his services. The other services which are set out in the plaintiff's affidiavit cannot be valiable in this appeal, because they form no ground of recovery upon the trial. According to the plaintiff's statement, he has received on account of the bankrupt proceedings \$20, which was not credited upon the trial. The excuse for not appearing was sufficient, and the fact that he was not credited upon the trial. The excuse for not appearing was sufficient, and the fact that he was not credited upon the plaintiff should be paid the \$10, which the defendant admits to be due, and the costs of the court below the defendent and the properly states the contract between the plaintiff should be paid the \$10, which the defendant had the properl

dence was insufficient to make out the defence of menry, and the verdict was properly rendered for the plaintest. The evidence of greened of the plaintest. The evidence of greened of greened of greened on former occasions is never admitted to establish a lefence of usury. The judgment should be affirmed. paid to Hirst was properly excluded. Userly paid on former occasions is never admitted to establish a defence of userly. The judgment should be affirmed. Wilson & Tolten vs. Harton—broamam, F. J.—There was no error in the ruling or decision of the Justice. The contract between the parties authorizing the defendant to do painting and papering, made after the contract for hiring, was valid, and warranted the conclusion of the Justice that the plaintiff intended to pay for, or allow for them, out of the rent. The subsequent payment of rent, without deducting, although a matter for the consideration of the Justice, was not conclusive against the defendant, or a waiver of claim for such repairs. The judgment should be affirmed.

Mulhern as Hyde—Ingraham, F. J.—The Justice returns that the defendant did not appear on the return day or the adjourned day. The defendant shows no excuse for his default in not appearing. We can never sanction a practice that a defendant and his counsel may absent themselves from the court on the day of trial, and then offer as an excuse other engagements for setting aside the judgment. If such is established as the law of this court on appeals, v. Fr few judgments can hereafter be recovered in Justices' courts in this city that we should not be called upon to reverse on appeal. Judgment affirmed.

Veteliters v. Myers.—Woodnury, J.—The Object of the Code of Procedure was to simplify the rules of pleading, and practically dispensing With techni-

Petilere ev. Myere.- Woonstruw, 1-me oughet of the Conte of recordence was as sample to be called the collect of the Conte of the Conte

lecter of this port; it is not for the plaintiff now to object that his own evidence man not properly authenticated. But, besides this, when no make ground of invalidity is alleged against the contract of shipment in the complaint or otherwise, it is enough for the defandant to rely upon the presump-tion that the Collector, in granting the vessel as

seiner of the post; it is not for the plaintiff now to the companied of subjects of the plaintiff of subjects of the objects of the objects of the plaintiff of subjects of the objects of the plaintiff of subjects of the objects of the plaintiff of subjects of the plaintiff of subjects of the plaintiff of subjects of the plaintiff of the plaintiff of subjects of the subject of the plaintiff of subjects of the subject of the subject of the plaintiff of subjects of the subject of the subject

which did not exist against the assignor at the time of the assignment, but afterwards arose and was acquired by the defendant before notice of such assignment? Quere.

\*\*Mazetti vs. The New York and Hartem Railroad Company are duly authorized to lay their track in one of the streets of the city, they are not at all events, and without proof of negligence, or want of skill and reasonable care, liable for accidents which may be caused thereby. \*\*Loc.!\* 25 such negligence of want of care or skill in the manner of constructing or maintaining the track are necessary as between them and persons exercising the common right of passing and repassing through or across the street. Under the proofs in this case, the finding of the referce upon the question of negligence held conclusive.

\*\*Naylor vs. Schenck, et al—Woodburg, J.—The pendency of another action in favor of the defendant against the plaintiff, for the recovery of damages for breach of contract, will not prevent a reconferment of the same damages by way of defence to a subsequent action brought against such defendant upon the same contract.

\*\*Kane and wife, respondent, vs. Dulex, appellant.\*\*—Woodburg, J.—The Marine Court of the city of New York must render judgment within four days after a cause is finally submitted, or it loses jurisdiction, and a judgment rendered after the lapse of the four days will be reversed. It seems that where the case is tried by a jury, and a verdict for the defendant has been rendered, the omission of the court to render judgment thereon will not deprive the benefit of the verdict in his favor. That verdict may be pleaded by him in bar of another action, though no judgment is entered thereon. The plaintiff in such case cannot, after verdict, elect to be non-suit and then maintain another action for the same cause.

\*\*Goldsmith, appellant, vs. Oconnor, respondent.\*\*—Woodburgh and promised to pay for the services rendered were useful, and promised to pay for the service rendered were useful, and promised to pay for the services ren

from the terms of the employment (citter expressed or impossible from other circumstances), success was a condition of the claim for compensation.

Henry, appellent, vs. Mervin, respondent—Woodenty, J.—Where an agent for another sells goods without disclosing the hame of his principal, the purchaser may pay the purchase money to the agent, or settle with the agent is apparent authority. But placing the amount to the credit of the agent, against a pre-existing indebtedness, with knowledge that the goods were held by the agent for some other person, for sale, is not such a payment, and the principal (the owner) may recover, therefor, notwithstanding such credit. An agent to sell goods has no authority to pledge them to secure an antecedent debt due by himself. And when the pledge in such case refuses to deliver the goods to the owner on his demand, but sells them at auction, such owner may recover their value in an action for the illegal detention and conversion, or he may affirm the sale, and waiving the tort, sue for the proceeds of the goods, as so much money received by the pledgee to his use.

Hunt and Nelson, respondents vs. The Hobeken Land Improvement Company, appellants.—Woodenty against the owners of another boat for negligence, producing a collision, the plaintiffs cannot recover as damages the probable loss of profits which they might have realized from a return trip from Albany, to which their boat was bound when injured by the collision. It is error to charge a jury that the statute of this State requiring steamboats when meeting each other to turn to the right, (or to starboard.), "does not apply to steamboats crossing the river." It does apply whenever the two boats meet each other, whether approaching each other upon courses either directly or obliquely opposed. The general law of navigation prescribes the same rule. When the course of one boat is at right angles to that of the other, the question of negligence depends upon the particular circumstances of the case, and not alone upon the question

for the benefit of Lyman's creditors. The assignment was assignor, had acquired title before respondent, as assignor, had acquired title before respondent, as assignor, had acquired title before the service upon them of the attachment. They the service upon them of the attachment. They had a right to issue, and, with a knowledge of the plaintiff's prior title, they should have issued. All that the sheriff could do would be to sue them for the debt, and if, in action brought by the sheriff, under section 332, or by the plaintiff in the attachment, under section 238, they were compelled to pay the debt, they would have been protected by such a compulsory payment. Holmes v. Remsen, 20 Johns, 229. If they had paid the debt without any notice of the assignment, or had paid it upon the liability to the attaching creditor, being established by action, the plaintiff could have no claim upon them. But their payment was a voluntary act, after actual notice of the assignment which they made at their own risk and peril. Robinson vs. Weeks, 1 Code R. V. S., 314, and does not discharge their liability to Lyman's assignor. The judgment should be reversed, and as the case has been fully investigated, we think judgment should be ordered for the plaintiff for the amount due and entered.

Peters, Appellant, vs. Diozsy, Respondent—Dally, J.—A plaintiff in a Justice's Court, upon falling in his proof, may elect to be non-suited, or the Justice upon the trial has the right to non-suit the plaintiff, it, in his judgment, he fails upon his own showing to make out his case either upon the ground of the incompetency or the insufficiency of the evidence, and a judgment of non-suit, in such a case is no har to a second action. But whether the Justice non-suits or the plaintiff submits to a non-suit, it must be done at the time or when the case is submitted to a jury, before the coming in of the verdict. If the cause, however, is submitted to the Justice, and he takes time to make up his judgment, it is no longer in the power of the plaint

the day issue was joined, the days of adjournment, if any, the day of days of trial, and the day upon which judgment was rendered. Judgment affirmed before and Byrnes.—Daly, J.—All the objections made to the manner in which the defendants were brought into Court, the nature of the summens, the form of it, the manner of this summens, the form of it, the manner of taking the security and the return of the constable, were waived by the defendants pleading to the merits. This we have repeatedly held. The defendants answered before the Court passed upon the objections. The objections and the answer were interposed at the same time, when the Court adjourned until the following day. On the following day the Justice decided against the defendants upon the objections, and under the plea that had been put in, complied with a demand for a Jury. The cause was tried before a jury, and a verdict rendered for the plaintiff, the defendants making no defence. This was conclusive upon the defendants, and the judgment should be affirmed.

Wallace, respondent, vs. Taylor et al.—Daly, J.—The defendant had a right to show that the plaintiff occupied the second story, and that the defendant occupied the lower part of the house, and connequently the plaintiff had but a right of enstance and egress through the hall. Had this appeared, it would have shown that the plaintiff had no right to put a plate upon the street door with his name upon it, without the consent and permission of the defendant.

Woodside, &c., respondents, vs. Allen Green, appellant.—Daly, J.—The seamen did not go to sea. If they were unable to do so, in consequence of sickness, or other cause, the plaintiffs were entitled to a return of the advance money, for the repayment of which, in the event of their not proceeding to sea, the defendant became security. The judgment shall be affirmed.

Williams, respondent, vs. McCauley, appellant.—Daly, J.—Where a defendant has once appeared in a cause, this court have no power to relieve him from a default subsequently taken ag

Sewing from hetties used by the defendant in his teads, upon the adjoining promises, held to her measure. Where he testimony as to the description in jury is conflicting, this Court will not interface with the finding of the Justice upon what is strictly a question of fact. Judgmant affirmed.

Whate, resp. us. Sanderson, appli.—By THE COURT.—Evidence not sufficient to warrant the submission of the case to the jury, and judgment to

Course.—Bridence not sufficient to warrant the submission of the case to the jury, and judgment reversed.

Travis vs. Barrett—It is not a sufficient encuse for a default that the defautant was negotiating with a third person for a settlement, who premised to have the cause adjourned, and aspected to do so. The existence of a set-off to a claim is no evidence of injustice having been done.

Brown & Crane vs. Cook.—The bolder of a mortgage on personal property, payable on demand, may maintain an action against an officer acting under an execution against the mortgager for taking say the property and disposing of the same, without proof of demand of the defendant due on the mortgage. Although the interest of a mortgager my be subject to a levy and sale, yet where the officer sells the property absolutely, he makes himself liable as a wrong doer.

McLaurey agt Pettigrew.—A mere license to insert beams in a wall of an adjoining house is not aminterest in lands, which, by the statute of frauds, must be in writing. Where the agreement has been executed, and the defendant has promised to pay the amount agreed on for the permission, the defendant is liable.

Chaffee vs. Cox.—An assignor may be examined as a witness without ten days notice, except where there is an assignee, executor or administrator against whom he is offered as a witness.

Raymond ts. Richardson.—The notice of appeal must contain the grounds of appeal, and it is not sufficient to refer to the appellant. In such case the appeal will be dismissed with costs.

Woodside, &c., respondent vs. Allen Green, appellant.—The defendant received \$45 advance money for three seamen, and signed an agreement to the effect that, if they did not go to see in a certain vessel, he (the defendant) would refund to the plaintiff the advance money. They went on board the vessel, but left shortly after, as was alleged, in consequence of sick-ness.

Opening of Fourth Avenue.

## Opening of Fourth Avenue. SUPREME COURT—MAY GENERAL TERM. Before Chief Justice Mitchell and Justices Roosevelt and Clerks. In January, 1853, a judgment was entered in the

Before Chief Justice Mitchell and Justices Roosevelt and Clerke.

In January, 1853, a judgment was entered in the Court of Common Pleas of New York city, ordering the plaintiffs in that suit to convey by deeds to the defendants respectively, certain property described in the judgment. The judgment was divided into ten sections, each section relating to a separate portion of land. The eighth section related to a lot of land lying between Third and Fourth avenues, and between Ninty-ninth and 101st streets. The tenth section of this judgment contained a clause declaring that "Fourth avenue, as herein used, should be taken at the width of one hundred feet, as originally laid out." In accordance with this judgment, McGown, one of the plaintiffs, conveyed a part of this property to one Clarke. That conveyance, however, made no reference to any judgment, metadom, one of the plaintiffs, conveyed apart of this property to one Clarke. That conveyance, however, made no reference to any judgment. The judgment wast that he conveyed lands bounded by the Third and Fourth avenues, east and west, and by Ninety-ninth and 101st streets, north and south. The conveyance by McGown granted no absolute right to 100th street, as would have been required by the judgment, nor was it strictly bounded by the streets as directed by the judgment, but conveyed the lots in fee simple, with full warranty, together with all the grantor's right in the avenues and streets. The Commissioners of Assessments, in laying out Fourth avenue took a part of this property belonging to Clarke, allowing him merely nonlinal damages. The report of the Commissioners was affirmed at special term, and an appeal was taken. The opinion of the court was rendered by his Honor Judge Mitchell, and was in effect as follows:—It is evident that the parties dening may have been purposely made, because the parties concluded that the deed as changed would heat carry out the construct of the city where there lands lay, bounding them by any avenue or street, was a dedication of

than three Commissioners, appointed by a Court of Record." It was, however, a familiar principle of law, well known to the framers of our constitution, and is specially laid down in our Revised Statut. (2 R. S., 555, sec. 27.) that when any power of the conferred upon two or more persons, it may be the conferred upon two or more persons, it may be majority of such persons, upon a perform. It was special provision is otherwise meeting of a. The damages are ascertained by the made. In fact, we judicial tribunal, and they three, acting as a queries of the judgment of the are to be decided accord. It is dissenting member majority. In this case the head of them, in agree with them; and he has probably to came, part, to the conclusion to which the conclusion to which the contravention of the Judiciary act of 1847, p. 645, rec. 38. But does that make the judgment necessarily erroneous? If costs are improperly taxed, and that should appear on the face of the judgment, the judgment would be good, and the relief of the party would be to move for a retaxation, which would be granted at the cost of the irregular party; not to raise the objection on an appeal, or against the validity of the judgment. Some discussion arone as to what papers should be presented on appeal in these proceedings. Everything which will aid in the decision raised by the appellant, should be presented as fully as it was presented at Special Term, together with every matter essential to show that the proceedings were regular, and that jurisdictor was obtained to give judgment. It is not necessary however, to include that part of the Commissioner report which relates exclusively to other parties, and throws no light upon the appellant's case. It is sufficient to state this in the most general terms. The report should be affirmed with costs.

Judge Clerke dimented. His opinion was published in the Health yesterday.

United States District Court.

United States Obstrict Court.

DECISIONS IN ADMIRALTY.

Before Judge Ingersoll

Dennis Harris so. The Eleanboat Pluto.—This wit is brought by the owner of the steamboat Jenny Lind to recover about nine lundred dollars damages eccasioned to her by a collision with the Pluto, on the 4th day of September, 1852. The libellants alleged that the Jenny Lind was coming down the North river, and when near Canal street, passed on the outside of the Pluto, which was also course down but slowly; that after the Jenny Lind had got come distance below, she turned round and headed up the river, to come in at the foot of Chambern street, and while coming into the dock, was run into by the Pluto, and struck on the larboard side, and much injured. The respondents alleged, on the other hand, that the Jenny Lind had no sooner passed the Pluto had the turned short in across the bown of the Pluto, at right angles; that, thereupon, those in charge of the Pluto, to avoid a collision, ported her helm tarry to pass astern of the Jenny Lind, but were unable to avoid a collision. Held by the Court, that the evidence from those on board the two steamboats being in direct conflict the one with the other, the Court must look to the testimony of the outsiders who were witnesses corroborate the statements thus corroborated, outweigh the testimony from the Pluto, as to the manner and cause of the collision. Decree, therefore, for libellant, with a reference to a commissioner to ascertain the damage.

Francis D. Feweler et al. vs. The ship A. Cheese brough.—This suit was brought by the libellants to recover damages for the breach of a contract made with them by the agent of the ship to carry on board the ship 40,000 feet of of lumber from this port to San Francisco. Held by the Court—That upon the cvidence there was no doubt that the contract was made by the agent of the ship to carry on board the ship to carry on board the ship to course the ship to course the ship to course the ship to course the courted was made with. It appeared that the lumb